IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8378 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G S R T C

Versus

IBRAHIUM P MANSURI

Appearance:

1. Special Civil Application No. 8378 of 1988

MR HARDIK C RAWAL for Petitioner No. 1

RULE UNSERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 08/09/2004

ORAL JUDGEMENT

Heard learned advocate Mr.Hardik C. Rawal on behalf of the petitioner. As per the office endorsement, respondent could not be served as the respondent is not

residing at the given address. However, considering the fact that it is very old matter of the year 1988, this Court is inclined to proceed with the matter even in the absence of the respondent.

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#. In the present petition, the petitioner Corporation has challenged the award passed by the labour court, Kalol in Reference No.1163 / 1985 [Old number 74 / 85] dated 5th February, 1988. The labour court, Kalol has granted reinstatement with continuity of service and 50 % backwages of the interim period. Learned advocate Mr.Rawal has submitted that the labour court has committed error in granting reinstatement as well as 50 % backwages to the respondent workman. He submitted that the charge against the respondent delinquent that in casual contract bus, there were 20 passengers more and found excess and for that, no remark has been made in the way bill by the respondent conductor. Therefore, there was clear negligence on the part of the respondent workman for not following the administrative instructions issued by the Corporation. He also submitted that it might be an intention of the workman to recover the amount of fare subsequently and therefore, he illegally allowed 20 passengers more in casual contract bus. Therefore, on the basis of the said allegation, after issuing chargesheet and completion of the departmental inquiry, he was rightly dismissed by the Corporation and therefore, interference by the labour court was uncalled for and hence, the labour court has committed gross error in setting aside the dismissal order.

#. It is pertinent to note that no appearance is filed on behalf of the respondent.

#. I have considered submissions made by the learned advocate Mr.Rawal and also perused the award in question. It is necessary to note that no reply is filed by the Corporation before the labour court. However, the petitioner Corporation had produced inquiry papers but no other documents produced on record. The labour court has examined the documentary evidence produced by the Corporation and considered the important fact that the workman was working as the Conductor at the relevant time and had just completed service of eight months and as such, he was newly recruited conductor when the bus was checked by the checking staff. There is no allegation about dishonesty and misappropriation levelled against the conductor by the Corporation. Misconduct which was committed by the workman was that in casual contract bus, 20 more passengers were found travelling and the

conductor has violated the Rules of the Corporation and not enlisted the names of that twenty passengers in the memo when the bus was checked. No fare and tickets amount of twenty passengers were deposited by the parties before the conductor and therefore, the Corporation had issued chargesheet to the conductor. The defence of the workman was that these twenty passengers had been in the bus entered by force against his wishes. This defence is turned down by the Corporation as not proved. There is no actual loss to the Corporation because ultimately, that the amount in question was recovered from the concerned parties. The labour court has come to the conclusion that when there is no allegation as to dishonesty and misappropriation by the conductor but only S.T. Rule has been violated, it can be presumed that because of the conductor was new, some negligence of rule might not be brushed aside and therefore, when the conductor has not committed any serious misconduct relating to dishonesty or misappropriation and in such circumstances, the order of dismissal is harsh and disproportionate. Therefore, the labour court has exercised the powers under Section 11-A of the Industrial Disputes Act, 1947. The labour court considered it just and proper to set aside the dismissal order because considering the gravity of misconduct, dismissal order is unjust and harsh. Thereafter, the labour court has examined the question of backwages and there is no evidence produced by the Corporation about gainful employment of the workman. Therefore, the labour court has though it fit not to grant 100 % backwages to the workman concerned but only granted 50 % backwages of the interim period. This aspect, in my opinion, has balanced the order passed by the labour court. Denial of backwages also amounts to punishment imposed by the labour court as held by the Apex Court in case of JITENDRASINGH RATHOD, AIR 1984 976.

#. It is also important to note that this Court at the time of issuing of Rule in the present petition on 19th January, 1991 has not granted any stay or any interim relief in favour of the petitioner Corporation. Therefore, naturally, after period of 13 years, award in question must have been complied with by the Corporation. This is also additional aspect weighed with this Court for not interfering with the award in question. Having regards to the submissions made by the learned advocate Mr.Rawal and also perused the entire award. According to my opinion, submissions made by the learned advocate Mr.Rawal cannot be accepted and the same is rejected. In my view, the labour court has not committed any error which found apparently on the face of record. This Court

has limited jurisdiction to interfere with the award while exercising the powers under Article 227 of the Constitution of India. Moreover, this Court cannot reappreciate the evidence which has been appreciated by the labour court, so also, this Court cannot act as an appellate authority. As such, there is no procedural irregularity committed by the labour court which in no way requires any interference by this Court while exercising the jurisdiction under Article 227 of the Constitution of India.

In view of my aforesaid discussion, there is no substance in the present petition and therefore, the same is dismissed. Rule discharged. No order as to costs.

Date : 8.9.2004 [H.K.Rathod, J.]

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